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Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

1998

In the Matter of)	
)	
Implementation of the Telecommunications)	CC Docket No. 96-115
Act of 1996:)	
)	
Telecommunications Carriers' Use of)	
Customer Proprietary Network Information)	
and Other Customer Information)	
)	
)	
Implementation of the Non-Accounting)	CC Docket No. 96-149
Safeguards of Sections 271 and 272 of the)	
Communications Act of 1934, as amended)	

To: The Commission

**REPLY TO OPPOSITIONS TO AND COMMENTS ON
 PETITIONS FOR RECONSIDERATION OR CLARIFICATION**

RAM Technologies, Inc. ("RAM"), by its attorneys and pursuant to Section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405 (the "Act"), and Section 1.429(g) of the Commission's Rules, 47 C.F.R. § 1.429(g), hereby respectfully submits this Reply to the oppositions and comments (collectively, the "Comments") filed concerning the Petitions for Reconsideration (the "Petitions") in the Second Report and Order and Further Notice of Proposed Rule Making in the above referenced proceeding (the "CPNI Order").¹ In support hereof, the following is respectfully shown:

**The Prohibition Against CPNI Use for CPE and Information
 Services Marketing Should be Reconsidered.**

The Comments overwhelmingly support the Petitions seeking reconsideration (or forbearance) of the prohibition against a carrier's use of CPNI in connection with marketing

¹ FCC 98-27 (released February 26, 1998).

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"customer premises equipment" (CPE") and information services to its own customers, at least insofar as the rule applies to Commercial Mobile Radio Service ("CMRS") carriers. See, e.g., Comments of Bell Atlantic Mobile, Inc. Supporting Petitions for Forbearance ("BAM Comments"); Arch Communications Group Comments in Support of CMRS Petitions for Reconsideration and/or Forbearance ("Arch Comments") at 3-4; AT&T Opposition to and Comments on Petitions for Reconsideration ("AT&T Comments") at 5-9. Cf. GTE Comments/Opposition to the Petitions for Reconsideration ("GTE Comments") at 3-8. Even parties who generally oppose the use of CPNI in connection with CPE and information services agree that, due to the unique nature of CMRS services, restrictions on such uses by CMRS carriers are inappropriate. See Opposition of MCI Telecommunications Corporation to Petitions for Reconsideration and Forbearance ("MCI Opposition") at 24-25. RAM urges the Commission to reconsider its treatment of CMRS CPE and information services in light of the great weight of evidence in this proceeding.

As the parties have observed, CPE is an integral part of providing a CMRS service, and indeed, is part of the carrier's Title III radio license. Arch Comments at 4. Moreover, CMRS CPE is practically as well as legally inseparable from the carrier's licensed telecommunications service: a pager or handset must be programmed so that it can receive on the specific carrier's assigned frequency, and is otherwise compatible with the carrier's network, in order for the subscriber to receive service. See, e.g. AT&T Comments at 6-7.

CMRS CPE is also indistinguishable from the underlying telecommunications service in customers' minds. As several of the Petitioners demonstrated, and as Bell Atlantic Mobile's Comments show in detail, artificial distinctions between CMRS telecommunications services and

CPE run counter to established consumer expectations, and will in fact harm consumers by decreasing efficient provision of CMRS services. BAM Comments at 4-5, 7, 11-13. The Commission's CPNI rules will also hamper efforts to rapidly and efficiently deploy new CMRS technologies; for example, various CMRS parties have noted the difficulty posed in marketing digital services to subscribers, if at the same time they cannot inform those subscribers that a new digital handset will be needed to receive the services. See, e.g. AT&T Comments at 6-7.

Similarly, CMRS "information services" have traditionally been bundled with CMRS telecommunications services, and subscribers consider that combined package as the "service" to which they subscribe. Customer expectations, which the Commission has found to be the appropriate guiding principle for adopting CPNI restrictions, are that their CPNI will be used to offer them new service options, without regard to any regulatory distinction between "information" and "telecommunications" services. As Bell Atlantic Mobile notes, the only customer complaints generated by CMRS bundling of information services arise when a carrier fails to inform customers of the availability of information services, such as voice mail, that may be usefully integrated into their existing CMRS services. BAM Comments at 12-13.

For the reasons stated in its Petition, RAM concurs with the parties to this proceeding that, at least in the CMRS context, restrictions on CPNI use for CPE and information services marketing are not required by the statute, and undermine consumer expectations and preferences.

RAM, like every CMRS carrier in the nation, has long combined the provision of telecommunications services with the provision, maintenance and repair of the equipment necessary to receive those services. Since properly programmed equipment is necessary to receive a CMRS service at all, a CMRS carrier must be able to inform customers about their

equipment options, and the use of "network information" specific to the particular service is essential. To reiterate the example used by several parties, it would hardly serve customers' interests for a carrier to market new digital services to a subscriber, without informing the subscriber that the analog handset he/she currently uses will not work with the new service. Similarly, a paging carrier marketing regional service to a subscriber, on a different frequency than the subscriber's existing local service, would not be providing full customer service if it failed to inform the subscriber that his/her pager might need to be replaced or reprogrammed.

Although, unlike CPE, information services are not absolutely necessary for a customer to receive CMRS telecommunications services, customers consider those information services as part of their "total" CMRS service, and information services are certainly "used in" the provision of CMRS telecommunications within the meaning of Section 222. "Information services" such as voice mail are perceived by customers as valuable components of their mobile service; from the customer's perspective, "information" and "telecommunications" services are not nearly so distinct as the Commission's new regulatory structure suggests

The Commission should not blithely eliminate the long-standing, integrated marketing and rendering of CMRS telecommunications, information services and equipment. Consumers have relied for years on the use of CPNI for more efficient bundling of CMRS services and equipment, as carriers in this intensely competitive industry have vied to provide consumers with better-tailored service packages at lower prices. Absent a statutory mandate requiring abandonment of business practices that have served carriers and their customers well for many years, the Commission should not disturb the workings of the competitive CMRS market. And as the parties to this proceeding have demonstrated, Section 222 does not embody such a statutory

mandate.

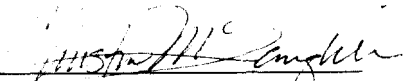
As the Commission correctly found in adopting its "total service" approach to CPNI use, Section 222 seeks to protect not only customer privacy, but also customer control and convenience. The Commission also correctly found that customers expect their carriers to access CPNI in connection with the provision of services to which the customer already subscribes. Customer expectations are thus the touchstone of Section 222, and the determination of which services fall within the "total service" to which the CMRS customer subscribes should be based not on artificial regulatory distinctions developed in the context of monopoly wireline services, but on the customers' perceptions of what constitutes their subscribed "service." As the parties have amply demonstrated, CMRS CPE and information services are an integral part of what customers perceive as their "total service." The Commission should reconsider its CPNI rules to protect those customer expectations.

Conclusion

For the reasons stated in its Petition and the foregoing reasons, RAM respectfully requests that the Commission reconsider or clarify certain portions of its CPNI Order.

Respectfully submitted,

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July 6, 1998

CERTIFICATE OF SERVICE

I, Christine McLaughlin, Esq., do hereby certify that the foregoing Reply to Oppositions to and Comments on Petitions for Reconsideration or Clarification, was served, on this 6th day of July, 1998, by first class U.S. mail, postage prepaid upon the following:

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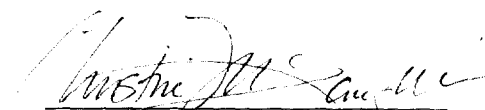
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